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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

21 JOHN ARMSTRONG, et al.,  
22 Plaintiffs,  
23 v.  
24 GAVIN NEWSOM, et al.,  
25 Defendants.

Case No. C94 2307 CW

## JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

The parties submit this Joint Case Status Statement pursuant to the Stipulation and Order entered March 28, 2011 (ECF No. 1868), which provides that “[t]he parties will file periodic joint statements describing the status of the litigation” every other month, beginning on May 16, 2011.

## CURRENT ISSUES<sup>1</sup>

#### **A. Allegations of Abuse, Retaliation, and Violence by CDCR Staff Against Class Members**

## 1. Plaintiffs' Statement

### a. RJD and Five Prisons Orders

10 In response to evidence of widespread abuse, assaults and retaliation against  
11 incarcerated people on the basis of their disabilities who request accommodations and face  
12 discrimination, on September 8, 2020, the Court issued orders finding remedial efforts  
13 were necessary in order to “prevent further violations of the ARP and class members’  
14 ADA rights at RJD.” ECF No. 3059 at 42. On March 11, 2021, the Court issued further  
15 orders finding remedial efforts were necessary to prevent ongoing violations of the ADA  
16 and ARP at five additional prisons. *See* ECF Nos. 3217 and 3218.

17 After over a year of negotiations, the parties reached agreement on the vast majority  
18 of provisions included in Defendants' RJD and Five Prisons Remedial Plans ("Plans").  
19 ECF No. 3336. Updated versions of the Plans were filed on March 23, 2022. *See* ECF  
20 No. 3393, Exs. A, B.

21 Following a year of negotiations, the changes to the staff misconduct complaint  
22 process were incorporated into new regulations, and the Notice of Change to Regulations,  
23 22-06, was published on April 8, 2022. On August 11, 2022, Plaintiffs' counsel received  
24 written notice that Defendants unilaterally changed regulations stemming from the  
25 negotiations. Specifically, Defendants removed from regulation the Allegation Decision  
26 Index ("ADI"), the negotiated tool to be used by CDCR in deciding which staff

<sup>27</sup> 1 Statements are joint unless otherwise delineated as either *Plaintiffs' Statement* or  
28 *Defendants' Statement*.

1 misconduct complaints were sufficiently serious to warrant referral to the Office of  
 2 Internal Affairs (“OIA”) for investigation. The parties have yet to reach agreement on how  
 3 they will address Plaintiffs’ concerns as articulated in Exhibit A to a prior Joint Case  
 4 Management Statement (ECF No. 3430) and the Court Expert’s Quarterly Report on  
 5 Investigations and Discipline (ECF No. 3433 at 4-5).

6 Currently at issue is Defendants’ proposal for an agreement that the ADI will only  
 7 apply at the six prisons currently covered by court order. Plaintiffs cannot agree. *See*  
 8 June 13, 2023, Letter from Plaintiffs’ counsel regarding Status of Staff Misconduct  
 9 Remedies, attached hereto as **Exhibit A**. Agreeing that the ADI would only be required at  
 10 six prisons undermines the guiding principles surrounding negotiated reforms—to create a  
 11 simplified staff complaint process to ensure higher quality and unbiased investigations and  
 12 to ensure greater accountability for staff misconduct. Defendants represented throughout  
 13 the negotiations that the reforms to the staff complaint investigation system that were  
 14 being discussed would apply statewide. Plaintiffs were already concerned that, over  
 15 Plaintiffs’ objection, Defendants were requiring—at prisons not currently covered by court  
 16 order—a “causal connection” between any alleged harassment, discrimination or  
 17 retaliation and the protected class, which will make the new reforms to the staff complaint  
 18 process more difficult to administer. The Court Expert shared some of Plaintiffs’  
 19 concerns. ECF No. 3433 at 2-3.

20 Having differing standards for processing staff misconduct complaints depending  
 21 on the prison where the complaint arises defies logic and undermines the entire concept of  
 22 accountability as enshrined in prior orders in this case. Defendants’ representations  
 23 throughout negotiations, that the staff misconduct complaint reforms would apply  
 24 statewide, avoided the need for additional litigation to ensure that common sense prevailed  
 25 and harm to class members would not be treated differently depending on the prison where  
 26 it occurred. Now that Defendants have backtracked on representations to uniformly  
 27 implement accountability reforms, additional litigation may be necessary.

28 Defendants have also begun quarterly production of documents in compliance with

1 the Court's Orders. Plaintiffs have produced multiple reports identifying ongoing failures  
 2 to hold staff accountable for misconduct. Plaintiffs' reports evidence incomplete and  
 3 biased investigations that thwart the discovery of misconduct and, even when misconduct  
 4 is apparent during the investigation, poor decision-making on the part of Hiring  
 5 Authorities prevents accountability. In response, “[t]he Court Expert will be working with  
 6 the parties to develop a methodology for reviewing individual cases in a manner that will  
 7 allow the parties to reach agreement on shortcomings and craft solutions.” ECF No. 3477  
 8 at 4.

9       CDCR is a statewide system. Plaintiffs assert that violations of the ADA and ARP  
 10 found thus far at six prisons exist system-wide and are committed to bringing such  
 11 evidence before the Court until all class members are protected. Plaintiffs continue to  
 12 discuss with Defendants the implementation of their Early Warning System (EWS) to  
 13 guard against such widespread abuse by one officer.

14                   **b. False, Retaliatory and Discriminatory RVRs**

15       Despite significant progress made towards court-ordered improvements to the staff  
 16 misconduct investigation and disciplinary system, the endemic use of false and retaliatory  
 17 RVRs by staff to cover up disability-related misconduct and/or to retaliate against class  
 18 members who report misconduct remains a problem. *See* ECF No. 3296 at 9. The same  
 19 biased review that plagues the staff inquiry and investigation processes also denies class  
 20 members due process in disciplinary hearings, resulting in longer terms of imprisonment,  
 21 denials of privileges, housing at higher classification levels, and an unwillingness to report  
 22 future misconduct or request disability-related help.

23       As in the staff complaint context, reviewers discount or ignore the testimony of  
 24 incarcerated people during disciplinary hearings. *See* ECF No. 3322, Ex. A. Reviewers  
 25 fail to discover evidence that staff have issued reports that appear plagiarized or otherwise  
 26 replicate conduct and charges that are improbably attributed to multiple people at the same  
 27 time. ECF No. 3296 at Ex. C. Reviewers also fail to identify cases where the conduct  
 28 charged is the result of staff failing to accommodate someone's disability. ECF No. 3322

1 at 11-12 & Ex. E.

2 Plaintiffs' counsel continues to identify class members who have received false,  
3 retaliatory, discriminatory or otherwise inappropriate RVRs. The use of RVRs to retaliate  
4 against and discourage the filing of staff misconduct complaints will persist unless  
5 Defendants take action to identify and root out problems through meaningful reforms to  
6 the RVR process.

7 Defendants have agreed to multiple changes, but Plaintiffs continue to raise  
8 outstanding problems. Defendants are in the process of revising the Chief Disciplinary  
9 Officer training to include the requirements for reviewing camera evidence, reviewing  
10 cases for bias, and the obligation to report staff misconduct when it is evident in the  
11 disciplinary process. Defendants agree to record audio for serious RVR hearings.  
12 According to Defendants, the recordings will be used for internal audits and will be  
13 available for review during investigations into allegations of false/discriminatory RVRs.  
14 The recordings will otherwise not be available to incarcerated people.

15 Defendants have also agreed to implement a headquarters-level audit of RVRs at 10  
16 prisons, beginning in October of 2022. Their draft audit plan includes, among other issues,  
17 identification of discrimination, retaliation, and bias in the RVR process.

18 Defendants have agreed to evaluate whether to include "red flags" in their EWS to  
19 identify when a staff member has initiated a disproportionate number of RVRs, when an  
20 incarcerated person has received a disproportionate number of RVRs, and instances when  
21 an incarcerated person receives an RVR within a certain period of time after having filed a  
22 staff complaint.

23 Defendants are still considering problems identified by Plaintiffs' counsel regarding  
24 the issuance of counseling-only RVRs which provide no due process in prison but can  
25 have negative consequences. Defendants have agreed to remove from electronic files  
26 RVRs that are voided or dismissed as a result of a confirmed allegation of staff  
27 misconduct. This is a significant step because those RVRs are currently relied on in risk  
28 assessments conducted during the Board of Parole Hearings process and are currently

1 viewable by the Board.

2 Plaintiffs are hopeful that the parties can agree to resolve problems and that  
 3 additional court intervention will not be necessary.

4 **2. Defendants' Statement**

5 **a. RJD and Five Prisons Orders**

6 In compliance with the Court's September 8, 2020, and March 11, 2021 orders,  
 7 Defendants have, along with Plaintiffs and the Court Expert, developed comprehensive  
 8 and effective remedial plans that the parties filed with the Court on March 21, 2022. ECF  
 9 No. 3393. CDCR has dramatically overhauled its processes to ensure unbiased and  
 10 complete investigations and, although not required by the Court's orders, Defendants have  
 11 deployed statewide the processes that restructure CDCR's staff misconduct allegation,  
 12 screening, referral, investigative, and disciplinary processes. As the Court has noted,  
 13 “[t]hese agreed-upon measures constitute substantial improvements that will go a long way  
 14 to bringing Defendants into compliance with the ARP and ADA at the six prisons.” ECF  
 15 No. 3356 at 2. The Court found, the “implementation of these [] remedial measures is  
 16 likely to have a positive impact on...the overall reliability of the outcomes of  
 17 investigations.” *Id.*, at 15.

18 The revisions to the regulations, noted above by Plaintiffs, are intended to further  
 19 ensure success of these processes by efficiently routing all staff misconduct complaints to  
 20 the most appropriate entity for investigation. Defendants believe that the process can be  
 21 improved, in part, by providing additional training to the initial screeners so that these  
 22 screeners have an improved understanding of what amounts to serious staff misconduct to  
 23 ensure consistent application of the new process and these revisions seek to achieve that  
 24 objective. Defendants have collected and shared data to support Defendants' proposed  
 25 revisions to the regulations. Defendants will continue to evaluate all information received  
 26 to monitor compliance with the Court's orders and to provide adequate resources to ensure  
 27 the successful transition to these new processes. Notwithstanding Plaintiffs' concerns and  
 28 objections related to the recent revisions to the staff-misconduct processes, CDCR's staff-

1 misconduct investigations and discipline processes are in compliance with this Court's  
 2 orders applicable to the six prisons.

3 Plaintiffs' foregoing statement that, "Defendants' proposal for an agreement that the  
 4 ADI will only apply at the six prisons currently covered by court order" is "at issue,"  
 5 mischaracterizes the current status because there is no dispute that the negotiated ADI only  
 6 applies to the six prisons.<sup>2</sup> In fact, the ADI remains a significant component of the  
 7 complete restructuring of the statewide process that has transferred the review of staff  
 8 misconduct allegations from the local institutions to the Office of Internal Affairs.  
 9 Defendants have proposed that any stipulation between the parties concerning the ADI  
 10 accurately reflect this Court's orders, which only applies to the six prisons. Plaintiffs'  
 11 singular focus on the ADI fails to recognize the multi-faceted overhaul of the staff  
 12 misconduct process and CDCR's other commitments to address staff misconduct,  
 13 including its commitment to deploy fixed-camera technology at fourteen institutions in  
 14 addition to the Court-ordered deployment of such technology at six institutions  
 15 (20 institutions total) and its commitment to deploy BWC technology at four institutions in  
 16 addition to the Court-ordered deployment of such technology at six institutions  
 17 (10 institutions total). Further enforcement orders as to other institutions is not necessary  
 18 because this statewide overhaul of the staff misconduct process remains in effect and  
 19 "additional litigation," as contemplated by Plaintiffs above, would only stall productive  
 20 negotiations between the parties and consume limited resources that could be put to better  
 21 use elsewhere.

22 / / /  
 23

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24 <sup>2</sup> "The Court's orders require Defendants to modify their systems only at the six prisons  
 25 and only with respect to alleged violations of the ARP and ADA. [ECF No. 3339-0 at 6.]  
 26 The Court did not require Defendants to modify their investigations system statewide.  
 27 Consistent with the PLRA's requirements, the additional remedial measures that the Court  
 28 ordered Defendants to include in their proposed plans were narrowly tailored to the six  
 prisons and to alleged violations of the ARP and ADA." ECF No. 3356 at 14. "The Court  
 limited its orders to the six prisons and to the context of the ARP and ADA in recognition  
 of the PLRA's requirement that any remedies ordered be narrowly drawn." ECF No. 3356  
 at 15.

## b. Demands for RVR Reform

2 As detailed above by Plaintiffs, Defendants have made significant progress and  
3 commitments to address Plaintiffs' demands that CDCR address the alleged practice of  
4 issuing false and retaliatory Rules Violations Reports. Defendants have committed to  
5 revising the Chief Disciplinary Officer and the Senior Hearing Officer trainings, to  
6 implement a headquarters-level audit of RVRs at ten institutions, to audio record serious  
7 RVR hearings for internal auditing purposes, revise the Department Operations Manual, to  
8 draft a memorandum addressing discriminatory RVRs, to create a new screening process  
9 to determine whether a physical disability contributed to the underlying conduct, to the  
10 development of Early Warning System (EWS) alerts, and to other remedial measures.

11 As detailed in a past Joint Case Status Statement, recent developments will  
12 effectively address most of Plaintiffs' concerns related to the RVR process. *See* ECF  
13 No. 3412 at 14-16. This includes the statewide deployment of the new staff misconduct  
14 investigation and discipline processes, the new pepper-spray policy, camera and audio  
15 technology (as noted above), and the fact that statewide allegations of false and retaliatory  
16 RVRs will be subject to an investigation by the Office of Internal Affairs.

17 Defendants disagree with Plaintiffs' contention that the counseling-only chronos  
18 implicate a liberty interest necessitating due process because, in part, inmates receive a  
19 copy of the counseling-only chrono and may contest such chronos in the grievance  
20 process.<sup>3</sup> Notwithstanding the significant progress made, there remains some  
21 disagreement between the parties. Nevertheless, Defendants have agreed to continue  
22 discussions with Plaintiffs, along with the Court Expert, to further address Plaintiffs'  
23 concerns related to the RVR process and CDCR's extensive proposed revisions.

24 | // /

25 | //

26

<sup>27</sup> <sup>28</sup> <sup>3</sup> The fact that the Board of Parole Hearings could consider such chronos at future parole hearings is too attenuated to invoke due process protections. *See Sandin v. Conner*, 515 U.S. 472, 484 (1995).

1           **B. Court Expert Investigation Into SATF, the State's Largest Prison**

2           **1. Plaintiffs' Statement**

3           In December 2022, the Court Expert filed his report and recommendations  
 4 regarding the treatment of people with disabilities at SATF, the state's largest prison. ECF  
 5 No. 3446. He found that people with disabilities at SATF are "living diminished and  
 6 needlessly difficult lives," and as a result "face harsher prison conditions, and thus greater  
 7 punishment, than their peers." *Id.* at 4. People were denied accommodations needed to  
 8 safely and independently perform a wide array of activities, including to eat, perform  
 9 bodily functions, write, and participate in rehabilitative programs. The Court Expert found  
 10 that "it was not management that identified these problems; it was Plaintiffs' counsel." *Id.*  
 11 at 5. Plaintiffs agree with the Court Expert that "much at SATF has to change" and that  
 12 "SATF has not demonstrated that it is able to self-monitor and self-correct in the manner  
 13 that would justify a lesser level of scrutiny by the Court and other outside monitors." *Id.* at  
 14 5-6.

15           Secretary Macomber has said that "[a]ddressing staff attitudes toward inmates with  
 16 disabilities is an overarching issue that must be addressed with all staff at SATF be they  
 17 custody, medical, or administrative." ECF No. 3463-1 at 3. Plaintiffs agree. But the  
 18 process will not be easy or quick. Changes in personnel, policy, and training simply are  
 19 not enough. On February 24, 2023, the Court ordered additional review and action by the  
 20 Court Expert, including a much-needed staffing analysis and development of policies to  
 21 ensure safe housing of people with disabilities. ECF No. 3467. Plaintiffs look forward to  
 22 working with the Court Expert, Defendants, and CCHCS to identify and develop durable,  
 23 meaningful, and complete solutions.

24           The problems identified by the Court Expert are not limited to SATF. Sufficient  
 25 ADA staffing, extreme ADA Coordinator turnover, provision of accommodations for deaf  
 26 class members who do not know sign language, and adequate policies and procedures  
 27 related to disability accommodations and durable medical equipment, for example, are  
 28 statewide issues that affect class members wherever they are housed. It is incumbent on

1 Defendants to address these issues statewide, and to not continue the reactive, piece-meal  
 2 approach that has typified their response to their obligations under the Americans with  
 3 Disabilities Act and *Armstrong* for so long.

4 **2. Defendants' Statement**

5 CDCR continues to actively work with the Receiver, CCHCS, and other  
 6 stakeholders to address the issues identified by the Court Expert in his report following his  
 7 investigation and to ensure the continued deployment of the proactive measures taken in  
 8 response. The Receiver, CDCR leadership, and SATF leadership continue to meet  
 9 regularly to further develop existing policy to ensure resolution of the issues identified in  
 10 the Court Expert's report. The Court Expert and his representatives are routinely invited to  
 11 these meetings. CDCR will continue to facilitate the Court Expert's efforts in anticipation  
 12 of his August 24, 2023 report.

13 **C. Accommodations for Deaf and Hard-of-Hearing Class Members**

14 **1. Plaintiffs' Statement**

15 Defendants continue to discriminate against D/deaf and hard-of-hearing class  
 16 members and have failed to remedy a number of fundamental accommodation issues.

17 One issue—computer-assisted, real-time transcription (“CART”—currently is  
 18 under Court order already. *See* ECF No. 3467 at 3-4. The parties’ discussion of CART  
 19 implementation and any ability to come to agreement to avoid the need for further  
 20 litigation has been impeded by Defendants’ continued delays in sharing information,  
 21 including draft policies and operating procedures. The initial implementation will be only  
 22 for due process encounters and, for this first time in this joint case status statement,  
 23 Defendants state that initial implementation will only be at SATF. Although the Court  
 24 ordered that CART be implemented at SATF “as soon as possible” for due process events,  
 25 programming, and education, Defendants could not, during a meeting over four months  
 26 later, say if or when an Internet connectivity assessment will be conducted—something  
 27 Defendants assert is a necessary prerequisite for implementation of CART in programming  
 28 and education spaces.

1 At least two other issues—effective communication of announcements and the poor  
 2 quality of hearing aids—are part of the Court Expert’s pending review. *See* ECF No. 3467  
 3 at 2 (order requiring Court Expert to file “report on Defendants’ progress in curing  
 4 violations of the ADA and ARP that he found in his [previous] report”); ECF No. 3446 at  
 5 37-42 (Court Expert report finding denial of effective communication to deaf and hard-of-  
 6 hearing people, including discussion of effective communication of announcements and  
 7 poor quality hearing aids).

8 Plaintiffs are concerned by Defendants’ delays and lack of meaningful engagement  
 9 on both issues, which may necessitate more direct judicial involvement. Notably, the two  
 10 hearing aid models currently issued to people in prison are so poor that many people report  
 11 they do not bother to wear them at all. In July 2022, Plaintiffs provided Defendants with a  
 12 report by a state-licensed audiologist with over 25 years of clinical experience with the  
 13 Veterans Health Administration. The expert found “the quality of the CDCR issued  
 14 hearing aids to be very poor” and concluded that the hearing aid models CDCR currently  
 15 provides cannot even be considered “hearing aids by today’s standards.” She made a  
 16 number of recommendations, including regarding provision of digitally programmable  
 17 hearing aids that have adaptive directional microphone technology, adaptive signal  
 18 processing, noise reduction strategies for steady state and transient noise, active feedback  
 19 suppression, tele-coil, and for class members with tinnitus (ringing in the ears), tinnitus  
 20 sound generators. She also recommended that pocket talkers be made available  
 21 immediately.

22 A year later, Defendants appear to have made little progress and implemented only  
 23 half-measures. First, Defendants have contracted, through CCHCS, with an “expert” to  
 24 provide advice on hearing aids and other accommodations. Plaintiffs’ counsel have  
 25 expressed concern that the individual selected does not appear to have the necessary  
 26 expertise (he is a throat specialist and not an audiologist). Defendants have no clear  
 27 timeline for resolving a new hearing aid contract and have not shared the recommendations  
 28 of their consultant, even though they previously stated that they would do so by May 26.

1       Defendants now claim that they will issue pocket talkers to any qualified person  
 2 with a verified hearing disability on an individual basis. That is long overdue but not a  
 3 replacement for effective hearing aids. Hard-of-hearing people have been isolated from  
 4 prison life for too long and need to be able to hear in a wide variety of contexts to  
 5 participate equally in prison life, including when talking with people on the yard or in the  
 6 dayroom or talking in a cell with a cellmate.

7       Plaintiffs continue to see Reasonable Accommodation Panels across the state  
 8 improperly deny requests for pocket talkers, including because someone has a disability  
 9 vest (which of course does not help a class member hear), because staff can speak loudly  
 10 and clearly (which does not help a class member in interactions with their peers or loved  
 11 ones), and because “[i]nmate ADA workers may assist you with communicating with  
 12 others” (which violates the privacy and independence of people with disabilities).  
 13 Defendants must immediately re-train staff, including healthcare staff and those who sit on  
 14 the Reasonable Accommodation Panels, about how to evaluate requests for pocket talkers;  
 15 identify and correct previous improper denials; and educate all hard-of-hearing class  
 16 members about the availability of this critical accommodation and how to request it.

17       Plaintiffs remain committed to working with CDCR and CCHCS to ensure that  
 18 appropriate accommodations are provided to class members, but any review by CDCR or  
 19 CCHCS must be conducted expeditiously and by someone with the requisite expertise, a  
 20 new hearing aid contract must be entered into without further delay, and pocket talkers  
 21 must be immediately made available to people at all times they may need to communicate  
 22 with others.

23       **2. Defendants' Statement**

24       Plaintiffs' statement fails to recognize the many areas on which there is agreement  
 25 and overstates the relatively few areas that remain unresolved or disputed, suggesting there  
 26 are controversies that should be litigated. The opposite is true. Defendants remain  
 27 committed to providing class members equal access to programs, services, and activities in  
 28 accordance with the ADA and the ARP and will continue to meet with Plaintiffs as part of

1 the parties' ongoing workgroups, to ensure the successful deployment of these services.  
 2 With the assistance of the Court Expert, the parties continue to meet to ensure the  
 3 successful deployment of CART, as detailed in the May 15, 2023 Joint Case Status  
 4 Statement. *See* ECF No. 3484 at 14-16. Recently, Defendants shared a proposed CART  
 5 policy memorandum with Plaintiffs. The third-party-vendor contracting process for CART  
 6 is complete and the new contract was executed on June 21, 2023. Under this new contract,  
 7 CDCR will deploy CART for due-process events at SATF and then roll it out to ten other  
 8 institutions. CART requires internet connectivity to function and Defendants have  
 9 completed the necessary assessment earlier this month. Defendants will continue to assess  
 10 software, security, and connectivity needs as required to successfully deploy CART at the  
 11 eleven institutions and to ensure functionality at the numerous end-user locales within each  
 12 institution. CDCR incorporated into the policy numerous suggestions from Plaintiffs  
 13 during the many workgroup sessions. This policy allows for expansion of CART to  
 14 institutions other than the eleven institutions already identified through various means,  
 15 including the 1824 process. Defendants have shared the revised policy and draft training  
 16 materials with Plaintiffs. To further demonstrate good-faith efforts to deploy CART as  
 17 soon as possible, Defendants have shortened the notice period, training period, and local-  
 18 operating-procedure revision due date to thirty days.

19 Plaintiffs' concerns related to hearing aids and pocket talkers necessitate the  
 20 collaboration between CDCR, CCHCS, the *Plata* receivership, and others. CDCR is  
 21 committed to accommodating class members as demonstrated by its recent request for  
 22 purchase of 150 pocket talkers for class-member use and CDCR anticipates purchasing  
 23 more pocket talkers for distribution. Pocket talkers will be provided through the 1824  
 24 process to any qualified person with a verified hearing disability, on an individual basis.  
 25 Defendants are also in the process of tracking requests for pocket talkers so that  
 26 Defendants know where best to deploy the newly acquired devices once they become  
 27 available. CDCR will continue its coordinated efforts to reasonably accommodate class  
 28 members in accordance with its obligations under the ADA and ARP, along with valuable

1 input from the Court Expert and Plaintiffs, ensuring no court intervention is necessary.

2 **D. Accommodations for Blind and Low-Vision Class Members**

3 **1. Plaintiffs' Statement**

4 The parties formed a workgroup to address issues facing blind and low-vision class  
 5 members. The workgroup covers, among other things, reading and writing  
 6 accommodations, orientation and mobility training for blind and low-vision class  
 7 members, accommodations assessments and skills training, braille literacy, availability of  
 8 white canes, accessibility of the ViaPath tablet program (including training), and  
 9 photophobia accommodations.

10 Plaintiffs sent a December 10, 2021, demand letter regarding the need for a  
 11 statewide system for identifying, documenting, and providing reading and writing  
 12 accommodations for blind and low-vision class members. As Plaintiffs explained in the  
 13 demand letter, Defendants must (1) identify, track, and produce the accessible formats of  
 14 written materials (such as large print, braille, and audio) that blind and low-vision class  
 15 members need to read and write (a statewide request first made by letter on March 15,  
 16 2021) and (2) make auxiliary aids for reading and writing—such as electronic video  
 17 magnifiers—available to these class members outside restricted locations and hours.

18 On September 22, 2022, Plaintiffs submitted a proposed stipulation to Defendants  
 19 to resolve disputes between the parties regarding the need for reading and writing  
 20 accommodations for blind and low-vision class members. Negotiations regarding  
 21 Plaintiffs' proposed stipulation are ongoing. Plaintiffs are hopeful that Defendants will  
 22 promptly develop a plan for remedying these longstanding ADA violations, and that  
 23 litigation will not be necessary.

24 The parties continue to meet to resolve accessibility problems for blind and low-  
 25 vision users of CDCR's new ViaPath tablets. Key CDCR and BPH forms, form responses,  
 26 and other documents are not available on the tablets, so at least in its current form,  
 27 Defendants' tablet program does not solve the accessibility barriers that blind and low-  
 28 vision class members face regarding access to essential forms.

1       The parties are also meeting regarding word processing accommodations for blind  
 2 and low-vision class members. Without such accommodations, these class members do  
 3 not have access to programs, services, and activities that require them to produce written  
 4 documents, because they are unable to write by hand, or are substantially limited in  
 5 doing so.

6       **2. Defendants' Statement**

7       Defendants continuously work to accommodate the needs of blind and low-vision  
 8 class members in all areas including their reading and writing needs, have collaborated  
 9 with Plaintiffs and the Court Expert, and have made significant progress to resolve  
 10 disputes between the parties to ensure class-member access and mitigate associated  
 11 litigation risks by negotiating a proposed stipulation between the parties to resolve  
 12 certain disputes. Moreover, as previously reported in the March 15, 2023 Joint Case  
 13 Status Statement, Defendants are reviewing different processes by which they can  
 14 identify, track, and provide reading and writing accommodations to blind and low-vision  
 15 class members. *See* ECF No. 3473 at 18-19. CDCR continues to utilize technology to  
 16 accommodate class members as detailed in the March 15, 2023 Joint Case Status  
 17 Statement. *Id.* For example, CDCR is working to expand class member access to the  
 18 electronic desktop magnifiers located at the prison law libraries beyond the regular  
 19 library hours to accommodate class members' reading and writing needs. Finally,  
 20 statewide deployment of ViaPath tablets<sup>4</sup> at all CDCR institutions was recently  
 21 completed and on-line instructions are available to families of incarcerated people.<sup>5</sup>

22       **E. Effect of the COVID-19 Pandemic on the *Armstrong* Class**

23       **1. Plaintiffs' Statement**

24       The COVID-19 pandemic continues to impact the transfer of *Armstrong* class  
 25 members to ADA accessible placements. Defendants have unfortunately been unable to  
 26

27       <sup>4</sup> *See* <https://www.cdcr.ca.gov/family-resources/tablets/>

28       <sup>5</sup> *See* <https://web.connectnetwork.com/get-started-with-cdcr-inmate-trust-deposits/>

1 find a way to address the backlog of class members housed inaccessibly in prisons not  
 2 designed to safely accommodate their disabilities, even after COVID-19-related movement  
 3 restrictions were relaxed in April 2022, and again in March 2023. As of July 7, 2023,  
 4 there are 91 class members housed inaccessibly in placements not designated to  
 5 accommodate their disabilities in violation of the *Armstrong* Remedial Plan (this does not  
 6 include an additional 142 class members with impacting placement codes awaiting  
 7 transfer, as of July 7, 2023, to designated mainline prisons from reception centers, and 88  
 8 incarcerated people improperly housed on upper tiers and/or top bunks.) The number of  
 9 inaccessibly housed class members has unfortunately remained stagnant for several years  
 10 now, with only some minor and temporary reductions, without ever getting close to pre-  
 11 pandemic levels of class members housed out-of-placement at any given time. Plaintiffs  
 12 are committed to working with Defendants on solutions to prevent the creation of the “new  
 13 normal.”

14       Most recently, Defendants stated that they are continuing to review the amount of  
 15 set-aside quarantine and isolation space required at each prison. Addressing this issue  
 16 should open up additional accessible beds that can house *Armstrong* class members.

17       Plaintiffs’ counsel are also concerned that the data on expedited transfers may not  
 18 tell the whole story. Some class members report that, as a result of pandemic related  
 19 transfer delays, they are housed in accessible placements, but on higher security level  
 20 prison yards. These class members are not counted in data currently produced by  
 21 Defendants. Defendants have reported that they have identified hundreds of people in this  
 22 position but, before they disclose information to Plaintiffs’ counsel, are trying to determine  
 23 why each person is housed out of level. Plaintiffs’ counsel will continue to attempt to  
 24 reach resolution of this problem.

25       **2. Defendants’ Statement**

26       Defendants continue to prioritize the reduction of the number of non-reception-  
 27 center class members on the expedited transfer list, notwithstanding unavoidable obstacles  
 28 to do so that have arisen as a result of the global pandemic, as detailed in previously filed

1 Joint Case Status Statements. ECF Nos. 3369, 3391, 3412, 3452, 3484. As of July 7,  
 2 2023, there are 91 non-reception center class members on the expedited transfer list, but at  
 3 least 19 of these class members are ineligible for transfer at this time due to several factors,  
 4 including placement in medical beds controlled by Healthcare Placement Oversight  
 5 Program (HCPOP). An audit of institutions' isolation-quarantine space to return space no  
 6 longer required for isolation-quarantine to regular housing is also ongoing and will help  
 7 address the limited number of lower bunk, lower tier beds. These efforts should also  
 8 address Plaintiffs' concern that class members may be temporarily assigned higher-  
 9 classification housing. CDCR continues to monitor and report requirements for all class  
 10 members housed in non-designated spaces and provide timely documentation to Plaintiffs  
 11 and the Court Expert. Defendants are reviewing the proposed changes to isolation-  
 12 quarantine spaces from California Correctional health Care Services (CCHCS) which  
 13 would return approximately 6,700 beds for use and shared the proposed plan with  
 14 Plaintiffs to garner their input to resolve this issue.

15 **F. Problems Regarding Access to Assignments for Class Members**

16 The program-access workgroup continues to meet to discuss credit earning, the  
 17 assignment process under Proposition 57, and disparities in the program-access assignment  
 18 data in response to Plaintiffs' allegations of disability-related discrimination. ECF  
 19 No. 2680 at 13-14. The parties had a productive site visit at Mule Creek State Prison on  
 20 March 29, 2023 concerning the program assignment process. Defendants will continue to  
 21 produce monthly data for the parties to develop a standard for analyzing program access  
 22 disparities. Defendants disagree with Plaintiffs' allegation that the data shows troubling  
 23 disparities in assignments for people with disabilities, but Defendants will continue to  
 24 participate in future discussions with Plaintiffs about this issue. *See* ECF No. 3369, Ex. H.

25 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of  
 26 Disability Tracking Information**

27 **1. Plaintiffs' Statement**

28 Defendants have agreed to ensure that anyone who had not been seen by a health

1 care provider in the last year would be seen for the purpose of reconciling their DME. The  
 2 only outstanding issue then is to ensure a process whereby health care providers actually  
 3 undertake a reconciliation during at least one encounter annually. Defendants maintain  
 4 that this is already a requirement during visits with Primary Care Providers. Yet,  
 5 Defendants found thousands of class members without needed DME despite the fact that  
 6 the majority of class members are seen regularly by health care staff and this is an existing  
 7 requirement during encounters. A process for ensuring that staff actually reconcile DME  
 8 during encounters is necessary to prevent ongoing and widespread problems.

9         Relatedly, Defendants acknowledged problems with identification of some class  
 10 members who utilize DME but who have not been assigned any disability code. Plaintiffs  
 11 were very impressed by the new tool and also by additional plans for a second tool to  
 12 identify people who have blatant mismatches between their disability code and their DME.

13         Unfortunately, Defendants' disability tracking system fails to identify and track  
 14 class members with upper-extremity disabilities. Plaintiffs requested that Defendants  
 15 create a new disability code for this population. *See* ECF No. 3322 at Exs. G and H.  
 16 CCHCS does maintain a list of thousands of class members with upper-extremity  
 17 disabilities and accommodations. It is difficult to understand why, since Defendants know  
 18 who these class members are, they will not assign them a disability code. Without a code  
 19 it is impossible for staff to easily identify who requires what accommodations. Plaintiffs'  
 20 counsel continues to share with Defendants reports of failures to accommodate class  
 21 members as well as statements from CDCR staff who require assistance in properly  
 22 identifying who must be accommodated. Plaintiffs are committed to resolving this  
 23 ongoing problem.

24         **2. Defendants' Statement**

25         Collaboration between the parties continues to develop a sustainable DME  
 26 accountability process and progress has been made as noted above and as previously  
 27 detailed in prior Joint Case Status Statements, including the March 15, 2023 and May 15,  
 28 2023 statements. *See* ECF Nos. 3473 at 23-26; 3484 at 22-25. CCHCS and CDCR agree

1 that individuals with upper-extremity disabilities that limit a major life activity, require  
 2 accommodation under the ADA, but disagree that CCHCS and CDCR must create a new  
 3 Disability Placement Program (DPP) code for multiple reasons including those previously  
 4 noted in the March 15, 2023 Joint Case Status Statement. *See* ECF No. 3473 at 26.  
 5 Notwithstanding these disagreements, CDCR and CCHCS will continue to meet with  
 6 Plaintiffs and the Court Expert to further discuss individuals with upper-extremity  
 7 disabilities and other issues including a sustainable DME accountability process.

8 **H. Parole Planning and Working with Class Members Preparing for Release**

9 On June 12, 2023, the Court entered a Stipulation and Order Amending the  
 10 September 11, 2006 Parole Field Operations Section of the *Armstrong* Remedial Plan  
 11 (ARP) to incorporate the new policies on transition to parole and parole services for class  
 12 members with disabilities negotiated by the parties. ECF No. 3491.

13 The parties continue to meet on the development and implementation of these new  
 14 policies and directives designed to address Plaintiffs' concerns that class members are not  
 15 consistently provided adequate planning for parole, adequate transitional housing,  
 16 transportation, benefits application assistance, assistance obtaining identification cards, and  
 17 other transitional services that are critical to succeed on parole, as raised in Plaintiffs' May 4,  
 18 2021 letter. ECF No. 2680 at 11-12; ECF No. 2655 at 11-13; ECF No. 3266 at 93-114,  
 19 Ex. F.

20 **I. Joint Monitoring Tool**

21 The parties remain committed to developing a strong and effective joint monitoring  
 22 tool and plan to test the tool at different types of prisons. The parties have been meeting  
 23 regularly to improve individual tool questions and negotiate many outstanding policy  
 24 issues that must be resolved to effectively audit. The parties continue to convene small  
 25 work groups, confer with the Court Expert about informal briefing, and continue to meet to  
 26 discuss and resolve the few remaining disputes between the parties such as a format for  
 27 scoring and reporting compliance.

28

1 **J. ADA Structural Barriers, Emergency Evacuation Procedures, and Master**  
 2 **Planning Process**

3 The parties continue to engage in the Master Planning Process aimed at ensuring  
 4 that CDCR prisons are accessible to people with disabilities. The parties have agreed to  
 5 tour institutions jointly to resolve any outstanding issues and concerns. The parties,  
 6 along with Plaintiffs' ADA access expert, toured LAC on April 29, 2022 and  
 7 November 9, 2022, and Plaintiffs' expert produced to Defendants a lengthy report in  
 8 response to problems identified at LAC on April 3, 2023. Plaintiffs' expert plans to  
 9 produce reports following the tour of each institution. The parties, along with Plaintiffs'  
 10 access expert, toured CMF on December 16, 2022, VSP on May 3, 2023, and CIM on  
 11 June 22, 2023. Plaintiffs plan to continue working with Defendants collaboratively to  
 12 address to identify structural issues or unfinished work that should be done to bring all  
 13 prisons in to compliance with the ADA.

14 As detailed in the March 15, 2023 and May 15, 2023 case management statements,  
 15 there is a dispute regarding the status of finalized agreements covering the work that  
 16 Defendants would undertake in this process. *See* ECF Nos. 3473 at 31-34; 3484 at 28-  
 17 29. Defendants assert that the revised (Attachment A) documents, as well as any change  
 18 requests, incorporated negotiated terms from informal settlement discussions between the  
 19 parties that took place a decade ago and represent all elements that were agreed on by the  
 20 parties regarding work to be done. Plaintiffs contend, however, the updated documents  
 21 which Defendants assert capture decade-old agreements were not produced to Plaintiffs'  
 22 counsel until years after the informal settlement negotiations discussing each  
 23 prison. Further, the documents do not contain sufficiently detailed information about the  
 24 specifics of planned ADA construction at each prison on which Plaintiffs' counsel would  
 25 be able to base any construction agreement. Plaintiffs do not agree that these documents  
 26 capture the final status of negotiations, nor do these documents represent formal  
 27 agreements. *See* ECF Nos. 3473 at 31-34; 3484 at 28-29. The parties will continue to seek  
 28 the assistance of the Court Expert to resolve this dispute.

1 Plaintiffs assert that, despite being newly constructed, the CHCF beds need to be  
2 reviewed by the parties since Plaintiffs have learned that many newer beds in health care  
3 settings were never inspected by Defendants' CASp inspectors for ADA compliance.  
4 Plaintiffs also dispute whether Defendants have a sufficient number of emergency exits  
5 that are fully accessible to prisoners with impacting placement mobility and vision  
6 disabilities in their housing, as detailed in previous statements including the March 15,  
7 2023 and May 16, 2022 Joint Case Status Statements. *See* ECF No. 3473 at 34; *see also*  
8 ECF No. 3412 at 35, Ex. E.

9 Respectfully submitted,

10 DATED: July 17, 2023

ROSEN BIEN GALVAN & GRUNFELD LLP

11 By: /s/Penny Godbold

12 Penny Godbold

13 Attorneys for Plaintiffs

15 DATED: July 17, 2023

ROB BONTA

16 Attorney General of the State of California

17 By: /s/Trace O. Maiorino

18 Trace O. Maiorino

19 Deputy Attorney General

20 Attorneys for Defendants

22 **FILER'S ATTESTATION**

23 As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence  
24 in the filing of this document from Deputy Attorney General Trace O. Maiorino, and that I  
25 have maintained records to support this concurrence.

27 DATED: July 17, 2023

/s/Penny Godbold

28 Penny Godbold

# **EXHIBIT A**



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June 13, 2023

**VIA ELECTRONIC MAIL ONLY**

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Re: *Armstrong v. Newsom*: Status of Staff Misconduct Remedial Plans  
Our File No. 0581-03

Dear Trace, Jenn, and Tamiya:

As you know, the Ninth Circuit Court of Appeals largely affirmed Judge Wilken's orders for remedial measures at RJD, CIW, COR, KVSP, LAC, and SATF. *Armstrong v. Newsom*, 58 F. 4th 1283 (9th Cir. 2023).

By this letter, Plaintiffs set forth our understanding of the status of the staff misconduct remedial measures, outline continuing concerns about implementation of those measures, and request a meeting to discuss the outstanding issues and unanswered questions outlined below.

**I. Stipulation Regarding the Allegation Decision Index**

Plaintiffs remain seriously concerned about the current inconsistencies that exist between the staff misconduct regulations, Remedial Plans, and party agreements that occurred after Defendants unilaterally removed the Allegation Decision Index from regulation. Plaintiffs' counsel initially proposed a stipulation to resolve these inconsistencies on November 4, 2022 and, after speaking with Defendants, proposed revisions to that stipulation on November 30, 2022. Defendants responded almost six months later with proposed edits on April 20, 2023, attached hereto as Exhibit A. For the

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reasons set forth below, Plaintiffs' counsel are unable to agree to any stipulation that is limited only to the six prisons currently covered by *Armstrong* court orders.

The ADI is the cornerstone of the staff complaint process reforms. Throughout negotiations to reform the staff complaint investigation and discipline process, Defendants represented that the changes they were making to the system would apply statewide. This was specifically stated multiple times during the negotiations and is memorialized in multiple writings including in Defendants' portion of the July 15, 2021 joint case status statement—submitted during negotiations about the Remedial Plans—where Defendants represented that “Defendants have agreed that important pieces of the remedial plans will apply statewide. For example, once the pepper-spray and staff-misconduct investigation and discipline processes are finalized as part of the Court-ordered remedial plans, ***these policies will be expanded to all institutions statewide.***” ECF No. 3296 at 11 (emphasis added); *see also*, e.g., ECF No. 3341 at 13 (in November 2021, stating that “staff-misconduct investigation and discipline processes finalized as part of the Court-ordered remedial plans, will be simultaneously expanded to all institutions statewide”); ECF No. 3369 at 13 (referring to “deploying unprecedented statewide changes to the staff misconduct and discipline processes”); ECF No. 3391 at 14 (discussing “statewide deployment of the new staff misconduct and staff discipline processes”).

It is only logical that the parties would negotiate statewide reforms because the accountability process is a statewide system. In the order granting Plaintiffs' requests for remedial measures at the Five Prisons, the Court found that CDCR's accountability system—which applied statewide—was “flawed” and led to “unreliable results.” ECF No. 3217 at 22. The Court also relied on the Office of Inspector General's (“OIG”) “findings that the *statewide system* for investigating allegations of staff misconduct is flawed and ineffective.” *Id.* at 28 (emphasis added); *see also id.* at 29-32 (discussing similar OIG findings about the statewide AIMS system).

As a result of representations by Defendants that the negotiated reforms to the staff complaint and investigation process would apply statewide, Plaintiffs chose to forego additional litigation to ensure remedial measures would be uniformly applied throughout the statewide system.

Now CDCR has decided that reforms will not be uniformly applied throughout the state. **The continued creation of an accountability process where staff misconduct differs depending on the prison where the allegation arises will only make additional litigation necessary.**

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#### **A. Unilateral Changes to Staff Misconduct Regulations**

Plaintiffs first became concerned that Defendants were undermining negotiated reforms when, in August 2022, without more than a few days advance notice to Plaintiffs' counsel, Defendants unilaterally modified the negotiated regulations and removed all references to the ADI from the regulations.

This change was significant. As described in greater detail in Plaintiffs' letter objecting to this change, the reforms to which the parties agreed depend on a greater number of cases being investigated by the Office of Internal Affairs ("OIA"). The ADI is the mechanism agreed on by the parties to ensure that cases reach OIA, if warranted. *See* August 31, 2022, Letter and Request for Meeting Regarding Plaintiffs' Comments and Objections to Revised Staff Misconduct Regulations. Despite Plaintiffs' objections, Defendants adopted new, permanent regulations in October 2022 that omitted reference to the ADI.

Now that the regulations do not include reference to the ADI, it is essential that the parties agree that the language included in the regulation means the same thing as the ADI in order to square the regulations with party agreements and the Remedial Plans. Plaintiffs have attempted, since learning of the impact of the regulations changes, to reach agreement with Defendants. *See* November 4, 2022, Letter Regarding Plaintiffs' Comments on Staff Misconduct Regulations, Stipulation and Proposed DOM Language.

As discussed below, Defendants have taken additional actions—beyond unilaterally removing the ADI from regulation—that further suggest they no longer intend to be bound by negotiations to implement a staff misconduct complaint process statewide. This is unacceptable. Each time Defendants carve out an exception to the statewide system allowing cases to be handled differently at prisons not currently covered by *Armstrong* court order, they jeopardize all Court-ordered reforms by unnecessarily complicating what was supposed to be a simplified system for staff accountability.

#### **B. Adoption of the Causal Connection Standard**

The most significant change thus far has been the implementation of additional screening requirements at the non-six prisons for routing staff misconduct complaints to the AIU. Specifically, Defendants adopted the "causal connection" and "material representation" standards for cases alleging retaliation, discrimination, and harassment by staff. Defendants adopted these standards in an effort to address their concerns regarding the number of complaints statewide that were being routed to the AIU for investigation instead of being routed to Locally Designated Investigators ("LDI") at the prisons. *See* ECF No. 3433 at 2-3. The adoption of the new standards means that now, in order for

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Defendants to route a retaliation, discrimination, or harassment complaint to the AIU, the complainant must allege “that the staff member’s actions were in fact connected to a protected status or activity.” ECF No. 3433 at 2. By inserting this heightened pleading requirement, and making it more difficult for cases to reach the AIU, Defendants undermined the purpose of the ADI, which was intended as an easy to follow, objective standard to ensure that investigators outside the prisons investigate the most serious allegations of staff misconduct. *See, e.g.*, ECF No. 3217 at 28-29 (noting OIG criticisms of local investigations affected by fact that reviewers were “frequently peers or coworkers of the staff members they were investigating” and OIG recommendation to reassign investigations to employees outside of the prison). *See also* Remedial Plans at II.A.i (stating the revised “process is designed to ensure that complaints alleging serious staff misconduct, regardless of the source of the complaint, are investigated by OIA”).

When Defendants proposed using the “causal connection” and “material misrepresentation” standards at the Six Prisons, Plaintiffs objected because they were difficult to administer, misapplied by Defendants, and inconsistent with the ADI. *See Letter from M. Freedman to J. Neill, T. Davis, Re: Defendants’ Proposed Causal Connection and Material Misrepresentation Standards* (Sept. 16, 2022) at 3-6. The parties also met with the Court Expert and attempted to apply the standards, which only further illustrated how subjective and difficult the standards were to administer. The Court Expert concluded, in his quarterly report, that the causal connection standard and other non-ADI screening mechanisms “are difficult to apply in a consistent and objective manner.” ECF No. 3433 at 2-3.<sup>1</sup>

In response, Defendants elected to impose the “causal connection” and “material representation” standards only at the prisons not currently covered by the *Armstrong* court order. In so doing, Defendants are creating two different accountability systems – one that operates at the Six Prisons and one with different standards at all other prisons. Defendants have done so despite representations throughout the negotiation process that the agreed-upon reforms would apply statewide.

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<sup>1</sup> In the litigation over the remedial measures, Defendants already unsuccessfully argued that the complaints at issue in Plaintiffs’ motion did not sufficiently “establish a causal link” between the misconduct and class members’ disabilities—an argument the Court rejected. ECF No. 3217 at 15-16. The “causal connection” standard appears to be a means to prevent AIU scrutiny of these allegations by again applying Defendants’ misguided assessment of whether cases show a sufficient causal link. Such an approach is inconsistent with the ADI. Sept. 16, 2022 Letter at 5.

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### **C. Rolling Back the Review of Local Investigations**

Defendants are also indicating that additional reforms to the staff complaint investigation process will only apply at the Six Prisons. For example, in an effort to improve the quality of local investigations, the parties agreed that OIA would review and approve investigations conducted at the local level. Remedial Plans at II.C. The purpose of OIA's review is "to ensure the inquiry was comprehensive and unbiased and request further inquiry if necessary." Remedial Plans at II.C. Only recently, in response to Plaintiffs' February 2023 staff misconduct report, did Plaintiffs learn for the first time that Defendants intend to limit this reform to the Six Prisons. *See Letter from Patricia Ferguson to Michael Freedman, Response to Plaintiffs' February 10, 2023 Review of CDCR's Accountability System (Mar. 17, 2023)*, at 1-2. This change is especially concerning given that the poor quality of local investigations was the basis for the court ordered reforms and, as recently as last week, the OIG continues to report on the low quality of LDI investigations. *See Office of the Inspector General, Monitoring the Staff Misconduct Investigation and Review Process of the California Department of Corrections and Rehabilitation: 2022 Annual Report (May 2023)*, at 21 (finding that overall, CDCR's performance in LDI investigations monitored by the OIG was "poor").

Limiting OIA review of local investigations to only the six prisons currently covered by *Armstrong* court order is just another example of how, despite representations that the negotiated reforms would apply statewide, Defendants instead are now creating differing standards for those prisons not currently covered by court order.

### **D. The Impact of Applying Different Standards to Different Prisons**

At the outset of negotiations, the Court Expert set forth key principles to guide negotiations for agreeing on effective reforms to the system. *See Email and Attachment from Ed Swanson to Plaintiffs & Defendants, Re: Armstrong: Investigations process proposal (March 12, 2021)*. Among the key principles were "the investigative process should be as simple and straightforward as possible" and "[i]nvestigation of all staff misconduct complaints should follow the same process." It is critical that the system be uniform to achieve those principles. A system that applies different standards for investigating the same allegation because the complaints were filed at different prisons is neither simple nor straightforward. In the case of CST and AIU staff, who are now responsible for applying differing standards of screening and review of cases depending on the origin of the complaint, this is especially confusing and problematic. Further, such a system is neither fair nor consistent, hallmarks of a functioning disciplinary system according to Plaintiffs' expert. *See ECF No. 3336-3, ¶ 14 (Plaintiffs' expert Joseph Ponte discussing importance of a "fair and consistent disciplinary system")*. A statewide system with differing standards for reviewing the quality of investigations depending on

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the prison where the complaint arose is inherently unfair—especially when staff can easily transfer prisons to seek lower accountability standards but class members have no control over their placement and the standard of accountability applied to their complaints.

#### **E. Implications for the ADI Stipulation**

Defendants' actions, trending toward the creation of different accountability systems and rolling back negotiated reforms at prisons not currently covered by *Armstrong* court orders, are now evident in Defendants' proposed edits to the stipulation. Specifically, Defendants have inserted a clause making it clear that the stipulation should be limited to the prisons covered currently by court order. *See Exhibit A at ¶ 4.* This is significant because the purpose of the ADI stipulation is to memorialize, in light of Defendants' removal of the ADI from regulation, the agreement that the language that was inserted in the place of the ADI is understood by the parties to mean the same thing as the ADI. However, if the agreement that the language in the regulation means the same thing as the ADI only applies to the Six Prisons, Defendants are free at any time to abandon the ADI, and the negotiated process that is dependent on the ADI, at all but the Six Prisons. **Plaintiffs cannot agree.** Defendants assert that the parties can discuss whether this provision is necessary in the stipulation. And perhaps the parties can agree to delete it from the stipulation. But the fact that it is even proposed, especially in light of the steps taken by Defendants to roll back reforms thus far as described above, gives Plaintiffs' counsel cause for serious concern.

**It is essential, to avoid future litigation, that Defendants adhere to a uniform accountability system and cease rolling back negotiated reforms at non-Six Prisons. Plaintiffs' counsel look forward to discussing a path forward.**

#### **II. Implementation of the Centralized Screening Team (CST)**

##### **A. Routine Grievances**

As stated in Plaintiffs' May 12, 2023 Report, the CST is not properly screening grievances to identify if they raise allegations of staff misconduct. Plaintiffs' counsel identified that for approximately 30 percent of grievances, the CST concluded that the grievance did not contain any allegations of staff misconduct when, in fact, the grievance did contain such an allegation. Plaintiffs estimate that these errors could mean that, at just the Six Prisons, the CST may have misclassified as routine as many as 9,000 grievances that actually contained one or more allegations of misconduct.

**What steps are being taken to oversee screening and to confirm whether staff misconduct complaints are being appropriately identified?**

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## B. Routing Per ADI

As reported in Plaintiffs' May 12, 2023 Report, even where the CST correctly identifies an allegation of staff misconduct, the CST frequently does not recognize that the staff misconduct allegation is on the ADI, and thus improperly routes it for investigation by an LDI, rather than by the AIU. One concerning explanation for why this is occurring may be confusion regarding the application of the causal connection requirement which should only exist at non-six prisons but which could impact screening of complaints from the six prisons.

**What steps are being taken to oversee screening and to confirm whether staff misconduct complaints are being appropriately routed?**

## III. AIU Staffing

Defendants have not staffed the AIU with sufficient investigators to ensure Defendants comply with the Remedial Plans by conducting complete, unbiased, and timely investigations.

First, as reported in Plaintiffs' May 12, 2023 Report, AIU investigators are frequently failing to complete investigations within the timelines set forth in the Remedial Plan. These failures strongly suggest that the AIU does not have enough investigators.

Second, Defendants' data show that AIU investigations are taking longer to complete than anticipated. In the BCP seeking staffing for the AIU, Defendants estimated, after conducting a workflow analysis, that AIU investigations would on average take 24 hours of work to complete. Defendants requested funding for staffing based on that estimate. The most recent data Defendants provided to Plaintiffs (which covers the period up to April 30, 2023) show, however, that AIU investigations are taking 29 hours on average to complete, 21% longer than estimated.

Third, Defendants' data shows that the AIU is receiving many more cases than originally estimated. In the BCP, Defendants estimated that 21% of complaints would contain allegations of staff misconduct, and that the CST would route only 18% of those staff misconduct allegations to the AIU. The actual data is markedly different. Data for the Six Prisons shows that the CST is classifying a slightly smaller percentage of cases as allegations of staff misconduct than expected (18% v. 21%), but that a significantly higher percentage of those cases than anticipated are being routed to the AIU (51% v. 18%). Even assuming the CST is properly deciding which complaints contain allegations of staff misconduct and allegations that fall on the ADI (which, as discussed above, are assumptions not supported by the routine grievances and other cases reviewed by

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Plaintiffs), Plaintiffs calculate that the CST is routing 2.4 times more cases to the AIU at the Six Prisons than CDCR anticipated.<sup>2</sup>

Lastly, all of these issues are exacerbated by the fact that CDCR underestimated the number of complaints being processed by the CST. In the BCP, Defendants estimated that the CST would receive 12,292 602-1s per month from all prisons in the system. In reality, data that Defendants provided us up through November 2022 showed that CDCR was receiving 13,821 602-1s per month, a 12% increase over the BCP estimate.

In sum, AIU investigators are not completing investigations on time; investigations are taking longer than estimated; the CST is routing 2.4 times more investigations to the CST than anticipated; and there are more complaints overall than CDCR estimated.

**In light of this evidence, do Defendants believe that the AIU has enough staff to ensure all investigations are complete, unbiased, and timely? If yes, what is Defendants' basis for that belief, especially in light of the evidence discussed above to the contrary? If no, what are Defendants doing to address the issue?**

#### **IV. Training for Investigators**

Per the Remedial Plans, investigators will attend one State Personnel Board hearing biennially. Dkt. 3392-2 at 9. **Has this occurred? All investigators? When? Please provide training records.**

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<sup>2</sup> We calculated this figure as follows: Through April 30, 2023, there have been a total of 38,461 complaints processed by the CST at the Six Prisons. Using Defendants' assumptions in the BCP, 8,077 of those complaints should have contained an allegation of staff misconduct (21% of 38,461) and the CST should have routed 1,454 of the complaints to the AIU (18% of 8,077). In reality, the CST has routed 3,468 cases to the AIU, which is 2.4 times more than the 1,454 complaints that would have been routed based on CDCR's estimates.

Data produced by Defendants in December 2022, which showed information for all prisons, is consistent with the data for the Six Prisons. The data from all prisons showed that Defendants anticipated that the CST would route 505 complaints to the AIU monthly. Instead, the CST was actually routing 921 complaints to the AIU monthly, 1.8 times more complaints than predicted.

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#### **A. Locally Designated Investigators**

Plaintiffs are extremely concerned about ongoing biased and incomplete investigations conducted by LDIs. In response to Plaintiffs' February 2023 report, Defendants reported that the LDI training schedule for 2023 includes biweekly training throughout the state conducted by senior OIA agents. As of March 2023, 95 staff members in OIA and 3053 staff members in DAI had received LDI training. **By when do Defendants expect that all staff currently serving as LDIs will be trained? Plaintiffs reiterate the request for a copy of the recently updated LDI training.**

Plaintiffs' counsel seek to understand whether there are other factors, such as workload or other disincentives (beyond what can be eliminated through improved training) that undermine local investigations. For example:

- How are cases local cases assigned?
- Is there a specific investigations team at the prison who is responsible for conducting these investigations? Or is it the case that all sergeants and lieutenants are trained to conduct investigations and may be asked to do so?
- When assigned to conduct a local investigation, is that assignment in addition to the day-to-day responsibilities of managing a prison unit? Or are investigations the focus of LDI's such that they are only responsible for conducting investigations?
- What is the LDI investigation caseload?

#### **B. Allegation Inquiry Unit**

Please provide an update on the status of development of the OIA training course titled, "Preventing Bias in Investigations," which Defendants reported is being developed specifically to address and prevent bias in the investigative process. **When will this training be completed? Who, aside from AIU investigators, will receive this training? How will this training be delivered to the field? Plaintiffs request the opportunity to comment on a draft of the training. Is this the same training required by the Remedial Plans as "Implicit Bias" training? (Dkt. 3392-1 at 8; 3392-2 at 9.)**

#### **V. Implicit Bias Training**

Per the Remedial Plans, CDCR will work to modify the implicit bias training provided to managers through California State University, Sacramento to address implicit

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bias related to peace officers and incarcerated persons and parolees. Dkt. 3392-1 at 8; 3392-2 at 9. **Has this training been modified? Is it being provided to managers? Plaintiffs request a copy.**

CDCR will also develop an implicit bias training module that will be provided annually to investigators, vertical advocates, and hiring authorities. Dkt. 3392-1 at 8; 3392-2 at 9. Plaintiffs assume this is the same as the “Preventing Bias in Investigations” training mentioned in Defendants’ response to Plaintiffs’ February report. **Please confirm. Also confirm that this training will be provided to all investigators, including LDI’s, vertical advocates and hiring authorities.**

## **VI. Quality Control of Local Investigations**

### **A. Allegation Inquiry Report**

According to Defendants, the Allegation Inquiry Report (AIR) review process began in May 2022 for the Six Prisons. This is the process whereby an additional level of review will identify any deficiencies in inquiry reports completed at the institutional level. **Will this process be implemented statewide? Are Defendants tracking this process to determine whether any local inquiry reports are being flagged as problematic by OIA? For example, have Defendants identified any local investigators whose cases were flagged as incomplete or biased? Any who may require additional training? What steps have been taken in response?**

### **B. Conflict of Interest Checks**

As reported in Plaintiffs’ May 12, 2023 Report, the OIG recently testified about issues related to eliminating bias from investigations during a March 6, 2023, California State Assembly Subcommittee hearing on Public Safety. Per the testimony of Amarik Singh, the OIG has recommended that CDCR set up a process to check for conflicts of interest in local inquiry cases, as there was no such procedure in place for CDCR to identify LDIs’ potential conflicts before they are assigned to investigate their colleagues. Plaintiffs’ counsel agrees with this recommendation. Yet to Plaintiffs’ counsel’s knowledge, CDCR has not yet adopted that recommendation. **Is CDCR going to establish a process to check for conflicts of interest in local inquiries?**

## **VII. Timeliness of Investigations**

### **A. Local Inquiries**

Given that data shows that nearly half of AIU investigations are closed late, Plaintiffs’ counsel has questions about the timeliness of local investigations and whether

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those are completed within the required timeframes. **Please produce data, analogous to the data produced for AIU, to enable Plaintiffs' to monitor whether local inquiries are being completed within the time limits required.**

#### **B. AIU**

AIU staff are also failing to complete investigations by the deadlines set in the Remedial Plans: 120 days for investigations conducted by custody supervisors (Sergeants and Lieutenants) and 180 days for investigations conducted by Special Agents. Data provided to Plaintiffs' counsel indicated that, for investigations the AIU received in June-December 2022, **the AIU closed 46% of the investigations late.**

**What is the reason, according to Defendants, that investigations are being completed late? What is being done to remedy the problem?**

#### **VIII. Hiring Authority Review of Investigations**

According to data produced by Defendants on May 2, 2023, eighty percent of investigations that the AIU has completed are currently waiting for Hiring Authority action. Hiring Authority review is the only thing standing in the way of implementing important corrective or disciplinary action that can reduce future harms to class members.

The purpose of negotiating shortened timelines to complete investigations was to ensure that CDCR could swiftly act to hold staff accountable for serious staff misconduct. When Hiring Authorities wait until the end of the statute of limitations to review investigations, they are unable to request additional investigation, if needed, which limits their ability to hold staff accountable for misconduct. The long delays cause a disconnect between the conduct CDCR is trying to eliminate and the action taken in response. Also, waiting until the end of the statute of limitations to resolve cases means that investigation files are produced to Plaintiffs' counsel and the Court Expert as long as 16 months after the incident occurred.

**What action will CDCR take to ensure that Hiring Authorities timely complete their reviews? Please report on whether CDCR is considering setting a policy requirement for how quickly Hiring Authorities must complete their review of investigation files once received.**

#### **IX. Training for Hiring Authorities**

Defendants reported that OIA and the Office of Legal Affairs (OLA) are working on a specific lesson plan for HAs that addresses many of the topics in Plaintiffs'

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February 2023 report. Please provide an update on the status of the development of this training.

**When will this training be completed? How will this training be delivered to the field? How often will it be provided to Hiring Authorities? What if there is turnover? Is this different than the Implicit Bias training required by the Remedial Plans? Dkt. 3392-1 at 8; Dkt. 3392-2 at 9? Plaintiffs request the opportunity to comment on a draft of the training.**

## **X. Vertical Advocate Training**

Per Remedial Plan, Vertical Advocates were supposed to receive trial training. Dkt. 3392-1 at 8; 3392-2 at 9.

**Has Vertical Advocate Trial training occurred? When? Please produce training records.**

## **XI. Monitoring of Hiring Authority and Vertical Advocate Performance**

Per the Remedial Plans, CDCR will use available information to monitor work performance of vertical advocates and hiring authorities in the investigation and disciplinary process, and if warranted provide training and feedback, and take other appropriate steps consistent with existing policy. Dkt. 3392-1 at 7; 3392-2 at 8.

**Is CDCR using available information to monitor work performance of vertical advocates and hiring authorities? If so, what information is being used? What has generally been the result of such monitoring?**

## **XII. Problems with Retention and Production of Video Evidence**

Video evidence is an essential component of the staff misconduct accountability system and is necessary to ensure that staff are held accountable when violations occur and are exonerated if not.

### **A. Problems with the Retention and Review of Video Evidence**

Plaintiffs have continued to report on issues with investigators failing to retain and review video footage. Defendants have acknowledged the issue with timeliness of AVSS footage requests in their March 17, 2023 reply to Plaintiffs' Review of CDCR Accountability System Report. Defendants have implemented an expectation that AIU investigators will request video within 10 days, and to require investigators to interview

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the complainant if needed to gather information on the time, date, location and staff involved.

**How are Defendants monitoring this requirement? Plaintiffs are especially concerned in cases where footage is requested, but it may not be discovered until later that it is not enough footage or is the wrong footage. How will the new requirements ensure that investigators are not only requesting footage but are confirming they have the enough of and the correct footage to properly investigate the complaint?**

Additionally, DAI is creating a process for local investigators to request footage within 10 days, and have agreed to revise the 1118 form to include the video request date. **Have Defendants put this process in place? In addition, Plaintiffs have the same questions as above about this requirement and how it will be monitored.**

#### **B. Problems with the Production of Files/Video**

Plaintiffs' counsel continue to encounter gaps in the production of case files including missing documents and videos. This issue has improved, and Plaintiffs appreciate that Defendants are responsive to email requests for missing files. Nevertheless, concerns remain that, if Plaintiffs are receiving incomplete productions, case files may be incomplete for Hiring Authorities, Executive Reviewers, and any others who are responsible for conducting case file reviews. **What steps are being taken to address incomplete case productions?**

Further, Plaintiffs' counsel has received some audio recorded interviews with witnesses. **Are local inquiries and AIU interviews recorded? Please explain why a small number of cases produced to Plaintiffs' counsel contain recordings with case files.**

#### **C. RJD Production**

Plaintiffs are also concerned about the low number of cases produced for RJD in recent productions. For example, the most recent production for RJD includes only 34 cases, whereas KVSP includes 110 cases. RJD houses hundreds more class members than KVSP. Similarly, the most recent LAC production includes 106 cases, and also houses fewer class members than RJD. In addition, Plaintiffs are aware of multiple 602's filed by class members for allegations of staff misconduct that are multiple months over a year old and still have not surfaced in quarterly productions. **Please report on why the production of RJD cases appears much lower than productions for other institutions.**

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### **XIII. Settlement Agreements and State Personnel Board Decisions**

Per the Remedial Plans, Defendants are required to produce all settlement agreements and State Personnel Board decisions in the quarter the institution receives them. Dkt. 3392-1 at 15; 3392-2 at 16.

**Are there settlement agreements and State Personnel Board decisions that exist and should have been produced to Plaintiffs' counsel? If so, please produce them.**

### **XIV. BWC Compliance**

Plaintiffs have continued to report on issues of BWC non-compliance in quarterly reports on CDCR's accountability system. Plaintiffs' review of BWC footage from the productions shows that staff continue to violate BWC policies and that investigators and the Hiring Authorities are often failing to take appropriate action when BWC videos reflect intentional noncompliance.

Defendants have acknowledged there are legitimate violations of department policy. After May 2022, CDCR implemented a new policy that requires instances of BWC non-compliance discovered during the course of an investigation to be investigated and included in the final report. Defendants also implemented a technology that audibly alerts officers when their BWC has been deactivated for 15 minutes. This has been implemented at the six prisons.

**Plaintiffs have requested by not yet received a copy of the May 2022 BWC non-compliance policy.**

Defendants previously reported they were implementing a BWC non-compliance auditing system. Plaintiffs' counsel objected to Defendants' plan for auditing BWC non-compliance which would only identify instances of BWC non-compliance for cameras that were left off for over an hour and a half during an eight hour shift.<sup>3</sup> Thus the audit would primarily identify accidental deactivations, not intentional deactivations, which are the most concerning. Defendants' new system that audibly alerts staff that BWC has been deactivated for more than fifteen minutes calls in to further question the utility of Defendants' audit plan.

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<sup>3</sup> See Dkt. 3412 at 8.

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**What is the status of BWC audits? Are they occurring? Have Defendants taken steps to redefine the 1.5 hour standard which triggers which deactivations will be audited? What are the results of the audits?**

Lastly, BWC and AVSS are rolling out at prisons not currently covered by *Armstrong* Court Order. **Do the BWC and AVSS policies—including compliance with BWC and preservation, retention, and production of footage during investigations—apply statewide? Please produce statewide video policies to Plaintiffs' counsel.**

#### **XV. Post-Investigation Review Panel**

Defendants were supposed to establish the Post-Investigation Review Panel in quarter three of calendar year 2022, to review whether investigations were complete and unbiased and to review hiring authorities' disciplinary decisions quarterly. Dkt. 3392-2 at 9. For at least the first quarter of the first two years, CDCR is supposed to retain an outside expert with law enforcement investigation experience. *Id.* The panel is supposed to review 12 cases quarterly and to maintain meeting minutes and recommendations of the panel.

According to Defendants' response to Plaintiffs' February report, retired Sacramento Police Chief, Daniel Hahn, has been retained to serve as the outside expert in this process. **Please provide an update on this process. Has the panel convened yet? How many times? Are there meeting minutes and recommendations stemming from this process?**

#### **XVI. Anti-Retaliation Measures**

Per the Remedial Plans, CDCR agreed to use a multi-pronged approach that includes training, town hall meetings, and the display of educational posters to combat ongoing retaliation. Dkt. 3392-1 at 17; 3392-2 at 18. CAMU was to provide direction to staff about how to create content for monthly town hall meetings with incarcerated people with disabilities by working with the IAC to develop content that is relevant to the specific concerns of these individuals. **Has this content been created? Are the monthly town hall meetings occurring at all six prisons? What proof of practice is kept?**

#### **XVII. Annual Training for all Custody, Mental Health and Medical Staff**

Per the Remedial Plans, CDCR has developed training to eliminate violations of the rights of incarcerated people with disabilities under the ARP and ADA. This training is required to be provided annually to all custody, mental health, and medical staff at the

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Five Prisons who interact with disabled inmates and at RJD for those who interact with class members. Dkt. 3392-1 at 17; 3392-2 at 18.

**Is this occurring annually at the six prisons for all required staff? What proof of practice exists? Please produce training records.**

## **XVIII. Supervisory Staffing**

Per the Remedial Plans, CDCR has increased supervisory staffing at all six prisons. Dkt. 3392-1 at 15-16; 3392-2 at 16. Correctional sergeant positions were added seven days a week at the following levels:

RJD	9
CIW	2
KVSP	7
LAC	7
COR	8
SATF	14

**Has there been any change to staffing levels for sergeant positions at the six prisons? Has there been any change in responsibilities for the sergeant positions at the six prisons? Have the post-orders changed since Plaintiffs' reviewed drafts? Please produce current copies of the post orders.**

The sergeants are also to conduct a minimum of one check-in with any *Armstrong* class member who has filed a staff complaint within the preceding 30 days. Dkt. 3392-1 at 16; 3392-2 at 17.

**Is this occurring?**

## **XIX. Use of Force Policy Compliance**

Plaintiffs' counsel have identified a number of violations of Use of Force policies apparent in video footage produced during quarterly productions. Most notably, staff fail to use controlled force when required in many situations, especially when there is merely a failure to comply with an order. Also, Plaintiffs have identified multiple situations where staff could have, but did not, act to deescalate the situation, as required by policy, and in some cases actions of staff actually fanned the flames. In many of these cases, the Hiring Authorities failed to hold staff accountable for their policy violations. Plaintiffs

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are concerned, given that these cases span multiple prisons and multiple staff members, that existing training may not go far enough to make clear expectations regarding when controlled force is required and expectations to avoid force by deescalating tensions.

**What, if any, steps are being taken to address use of force failures evident in quarterly production cases?**

## **XX. Pepper Spray Policies**

Per the Remedial Plans, CDCR revised its policies to more effectively monitor and control the use of pepper spray by staff with respect to class members. Dkt. 3392-1 at 17; Dkt. 3392-2 at 18.

**Has there been any modification to the policy since an unsigned version was filed with the Remedial Plans? Can you produce a signed copy? Was the DOM modified to be consistent with the new policy?**

## **XXI. Early Warning System/False RVRs/Biannual Interview Process**

The parties are currently engaged in separate workgroups regarding each of these important issues.

As always, we appreciate your courtesy and cooperation in this matter, and look forward to meeting in the near future to discuss Defendants' compliance with the Remedial Plans.

Very truly yours,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Penny Godbold*

By: Penny Godbold

///

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June 13, 2023

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PMG:cg

cc: Ed Swanson	Jillian Hernandez	Joshua (Jay) Leon Guerrero
August Gugelmann	Robert Gaultney	Dawn Lorey
Alexander "Lex" Powell	Saundra Alvarez	Diane Toche
Nicholas Meyer	John Dovey	Joseph Bick
Patricia Ferguson	Robin Hart	Cory Lo
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Sharon Garske	Jason Anderson	Steven Faris
Sean Lodholz	Jane Moses	CDCR CAMU
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# **EXHIBIT A**

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26 Attorneys for Plaintiffs

27  
28 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

29 JOHN ARMSTRONG, et al.,

Case No. C94 2307 CW

30 Plaintiffs,

**STIPULATION AND [PROPOSED]  
ORDER REGARDING THE  
ALLEGATION DECISION INDEX  
AND RELATED REGULATIONS**

31 v.

Judge: Hon. Claudia Wilken

32 GAVIN NEWSOM, et al.,

33 Defendants.

[4484042-2;194638.1]

34 Case No. C94 2307 CW  
35 STIPULATION AND [PROPOSED] ORDER REGARDING THE ALLEGATION DECISION INDEX AND  
36 RELATED REGULATIONS

1       On October 29, 2021, the parties entered into a stipulation regarding the Allegation  
 2 Decision Index (“ADI”). A copy of that~~the this~~ stipulation (“ADI Stipulation”) is  
 3 attached hereto as Exhibit 4A and a copy of the ADI negotiated by the parties is attached  
 4 as Exhibit B. As stated in the ADI Stipulation.

5       The ADI Stipulation provided:

6       Defendants shall create a Centralized Screening Team (CST) within the  
 7 Office of Internal Affairs (OIA), and the ~~the~~ CST will evaluate whether a complaint  
 8 received by CDCR includes an allegation(s) of staff misconduct, whether the complaint  
 9 alleges misconduct toward an incarcerated person or parolee, and whether the complaint  
 10 alleges serious misconduct. CST will utilize an Allegation Decision Index  
 11 ~~(ADI)~~ to determine whether a complaint alleges serious staff misconduct toward an  
 12 incarcerated person or parolee. (See Ex. A, at p. 6.) Allegations that are listed on the ADI  
 13 will be referred to OIA for investigation. Allegations not listed on the ADI will be returned  
 14 to the local hiring authority for inquiry. The parties negotiated the ADI, which is a  
 15 material component of the RJD Remedial Plan and the Five Prisons Remedial Plan. A true  
 16 and correct copy of the ADI to which the parties agreed is attached as Attachment A.  
 17 Plaintiffs do not have any objections to the ADI as reflected in Attachment A. Defendants  
 18 intend to seek regulatory approval of the ADI, as reflected in Attachment A, as part of its  
 19 emergency regulatory package. If Defendants make any material changes to the ADI that  
 20 are inconsistent with the parties' agreement or substantially undermine the terms of  
 21 agreement prior to becoming effective, Plaintiffs shall be entitled to file objections to the  
 22 ... Plans related to the changes to the ADI. Plaintiffs shall meet and confer with  
 23 Defendants and the Court Expert prior to filing any such objections.

24       Ex. 1, ¶ 6.

25       On March 23, 2022, the Court entered a stipulation and order mandating that  
 26 Defendants implement the R.J. Donovan Correctional Facility Remedial Plan (“RJD  
 27 Remedial Plan”) and the Five Prisons Remedial Plan (collectively, the “Remedial Plans”).

28 (ECF No. Dkt. 3933.) The Five Prisons Remedial Plan applies to California State Prison-  
[4484042.2|194638.1]

1 Los Angeles County (LAC), Substance Abuse Treatment Facility (SATF), California State  
 2 Prison –Corcoran (COR), Kern Valley State Prison (KVSP), and California Institution for  
 3 Women (CIW). Consistent with the ADI Stipulation, t~~t~~he Remedial Plans  
 4 ~~contained~~contain provisions requiring Defendants to use the ADI to screen ~~allegations~~  
 5 complaints received by the CST to determine if they should be investigated by OIA or  
 6 returned to the institution for a local inquiry. ~~These provisions of the Remedial Plans are~~  
 7 ~~consistent with the ADI Stipulation.~~

8 ~~As stated in t~~The Remedial Plans, CDCR further state that, as part of CDCR's  
 9 ~~reforms to the investigation and discipline process, CDCR would promulgated~~promulgate  
 10 emergency regulations under the California Code of Regulations ("regulations") that were  
 11 ~~anticipated to be phased in~~effective on ~~beginning~~January 1, 2022. These emergency  
 12 regulations would described~~describe~~ the organizational changes to ~~regarding~~ the  
 13 processing of allegations of staff misconduct ~~allegations~~ toward an incarcerated person or  
 14 parolee.

15 ~~CDCR did promulgate those emergency regulations on December 8, 2021, which~~  
 16 ~~became effective on January 1, 2022. In~~April 8, 2022, Defendants promulgated some  
 17 revisions to the emergency regulations. The December 8, 2021, and April 8, 2022  
 18 emergency regulations (collectively, "Emergency Regulations") were consistent with the  
 19 ADI Stipulation and Remedial Plans.~~—~~The Emergency Regulations also incorporated the  
 20 ADI by reference and included the ADI as an attachment.

21 On August 15, 2022, Thereafter, Defendants promulgated published~~permanent~~  
 22 regulations to replace the emergency~~e~~Emergency R~~e~~egulations because the emergency  
 23 Emergency R~~e~~egulations were set to expire. Defendants published the proposed  
 24 permanent regulations on August 15, 2022.

25 The proposed permanent regulations differed from the Emergency Regulations ~~and were~~  
 26 ~~inconsistent with~~ the ADI Stipulation ~~and~~ and the Remedial Plans. ~~Rather than specify~~Instead  
 27 ~~of stating~~ that the CST would use the ADI to screen ~~eases~~complaints, the regulations, they  
 28 stated that grievances "shall be screened by CST, and allegations " [if the complaint  
 [4484042.2/194638.1]

1 contains allegation(s) of staff misconduct toward an inmate or parolee which include  
 2 complex issues requiring specialized investigative skills or resources, as described in  
 3 subsection 3486(e)(21), CST shall be referred refer the allegations to [Allegation  
 4 Investigation Unit (“AIU”)] AIU ... for investigation an allegation inquiry.” –Cal. Code  
 5 Regs., tit. 15, § 3486(c)(21). investigation.” (Emphasis added.) (The AIU is the unit  
 6 within the OIA that conducts investigations into complaints alleging misconduct toward  
 7 incarcerated persons and parolees). The proposed permanent regulations also did not  
 8 include any reference to the ADI and did not include the ADI as an attachment.

9 ~~Plaintiffs’ counsel discovered the inconsistencies between the proposed permanent~~  
 10 ~~regulations and the ADI Stipulation/Remedial Plans when Plaintiffs’ counsel reviewed the~~  
 11 ~~proposed permanent regulations after they had been published.~~

12 ~~Thereafter,~~ the parties, with the assistance of the Court Expert, met and conferred  
 13 multiple times about the differences between the proposed permanent regulations, the  
 14 Emergency Regulations, the ADI Stipulation, and the Remedial Plans. Because of  
 15 statutory time constraints. Defendants informed Plaintiffs and the Court Expert that if  
 16 Defendants made any changes to the proposed permanent regulations would require,  
 17 Defendants would be required to renote the proposed permanent regulations.  
 18 Defendants further informed Plaintiffs and the Court Expert that Further, If Defendants  
 19 renote the proposed permanent regulations, they proposed permanent regulations  
 20 would not take effect until after the emergency Emergency Regulations had expired.  
 21 Defendants further informed Plaintiffs and the Court Expert that If the emergency  
 22 Emergency Regulations expired, the emergency Emergency Regulations would cease  
 23 to exist and the regulations governing Defendants’ investigation process that existed prior  
 24 to before the emergency Emergency Regulations would govern. To avoid this,  
 25 Defendants did not renote the proposed permanent regulations. O.

26 ~~O~~On On October 20, 2022, the Defendants’ proposed permanent regulations were  
 27 adopted and became effective. See Cal. Code Regs., tit. 15, 15C.C.R. § 3486.

28 ~~The regulations governing Defendants’ investigation and discipline process are now~~

[4484042-2-194638.1]

1 ~~inconsistent with the ADI Stipulation and the Remedial Plans.~~ It is Plaintiffs' position  
 2 that Defendants must revise the regulations to make them consistent with the ADI  
 3 Stipulation and the Remedial Plans. Plaintiffs requested that Defendants make such  
 4 revisions. To date, Defendants have not yet agreed to do so. To address this disagreement,  
 5 and

6 ~~Accordingly, Because of Defendants' refusal to revise the regulations and in the~~  
 7 ~~interest of avoiding litigation related to this issue at this time,~~ the parties ~~hereby~~ stipulate  
 8 as follows:

9 1. The CST shall use the ADI, attached ~~as hereto as Attachment A to~~ Exhibit  
 10 ~~B1,~~ to screen all ~~grievances and third party~~ complaints received by the CST ~~as required by~~  
 11 ~~the Remedial Plans and the ADI Stipulation.~~ ~~The parties negotiated the ADI, which is a~~  
 12 ~~material component of the RJD Remedial Plan and the Five Prisons Remedial Plan.~~  
 13 ~~Grievances and third party~~ ~~Complaints~~ complaints that contain allegations of staff  
 14 misconduct toward an incarcerated person or parolee that are listed on the ADI will be  
 15 referred to the AIU for investigation. ~~C~~ ~~Grievances and third party~~ complaints that contain  
 16 allegations of staff misconduct toward an incarcerated person or parolee that are not listed  
 17 on the ADI will be returned to the local hiring authority for inquiry.<sup>5</sup>

18 2. Defendants ~~shall may~~ not modify the ADI unless ~~those modifications are~~  
 19 ~~stipulated to by the parties or ordered by this Court~~ ~~(1) the parties agree to a modification or~~  
 20 ~~(2) the Court issues an order modifying the ADI.~~

21 3. ~~Although Plaintiffs maintain that Defendants must revise the regulations to~~  
 22 ~~be consistent with the ADI Stipulation and Remedial Plans,~~ ~~The parties agree that to be~~  
 23 ~~consistent with the ADI Stipulation and Remedial Plans when processing staff misconduct~~  
 24 ~~complaints arising out of the institutions identified in the Remedial Plans the phrase~~  
 25 ~~"allegation(s) of staff misconduct toward an inmate or parolee which include complex~~  
 26 ~~issues requiring specialized investigative skills or resources," as used in Cal. Code Regs.,~~  
 27 ~~tit. 15, 15 C.C.R. § 3486(c)(21), Defendants' Department Operations Manual, or any other~~  
 28 ~~policies related to Defendants' staff misconduct investigation process, refers to allegations~~  
 [4484042-2 (194638.1)]

1 of staff misconduct listed on the ADI.

2 4. This stipulation is limited to the institutions specifically identified in the

3 Remedial Plans—RJD, LAC, SATF, COR, KVSP, and CIW.

4 3. ~~Defendantsshall, as soon as possible, propose revisions to the regulations that~~

5 ~~went into effect on October 20, 2022 (“proposed revisions”). The purpose of the proposed~~

6 ~~revisions shall be to make the regulations consistent with the Remedial Plans, the ADI~~

7 ~~Stipulation, and this Stipulation, and~~

8 4. ~~Prior toBefore publishing proposed revisions, the parties shall meet and~~

9 ~~confer with the assistance of the Court Expert to resolve any disputes regarding whether~~

10 ~~Defendants’ proposed revisions to the regulations are consistent with the Remedial Plans~~

11 ~~and the ADI Stipulation.~~

12 ##

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14 ##

**Commented [TM1]:** We can further discuss if we need this in this stip.

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1 IT IS SO STIPULATED:<sup>2</sup>

2  
3 DATED: November December April ROSEN BIEN GALVAN & GRUNFELD LLP  
4 —, 20223

5 By: \_\_\_\_\_  
6 Michael Freedman

7 Attorneys for Plaintiffs

8  
9  
10 DATED: December April November ROB BONTA  
11 —, 20223 Attorney General of the State of California

12 By: \_\_\_\_\_  
13 Trace O. Maiorino  
14 Deputy Attorney General

15 Attorneys for Defendants

16  
17 **FILER'S ATTESTATION**

18 As required by Local Rule 5-1, I attest that I obtained concurrence in the filing of  
19 this document by all signatories, and that I have maintained records to support this  
20 concurrence.

21 DATED: November December April,  
22 —, 20223

23 \_\_\_\_\_  
24 Michael Freedman

25 ##  
26 ##  
27 ##  
28 ##

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[4484042-2;194638.1]

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Case No. C94 2307 CW

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STIPULATION AND [PROPOSED] ORDER REGARDING THE ALLEGATION DECISION INDEX AND  
RELATED REGULATIONS

1 [PROPOSED] ORDER

2  
3 IT IS SO ORDERED.

4  
5 DATED: \_\_\_\_\_, 20222023

6 Honorable Claudia Wilken  
7 United States District Judge

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[4484042-2] [194638.1]  
9 Case No. C94 2307 CW  
STIPULATION AND [PROPOSED] ORDER REGARDING THE ALLEGATION DECISION INDEX AND  
RELATED REGULATIONS